U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 25 2005
SRC 03 188 52744

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a market consultant in the energy field. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director did not address whether the petitioner qualifies for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. Rather, the director determined that a waiver of the job offer requirement was not warranted in the national interest because the petitioner did not have a Ph.D., which the director concluded was required in the petitioner's field.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds two Master's degrees, one in electric power control from the Chinese Academy of Sciences, and a second in energy finance/economics from the University of Texas at Austin. The petitioner's occupation falls within the pertinent regulatory definition of a profession.

In defining advanced degree, the regulation at 8 C.F.R. § 204.5(k)(2) provides: "If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." The director concluded that a doctoral degree is required in the petitioner's field based on the fact that all of the petitioner's references have such degrees. We do not find this analysis helpful. According to the Occupational Outlook Handbook, available online at http://stats.bls.gov/oco/home.htm, a "master's or Ph.D. degree in economics is required for many private sector economist jobs and for advancement to more responsible positions." The materials further state that a "master's degree is usually required to qualify for more responsible research and administrative positions." Nothing in these materials suggests a doctorate is required in this field except in academia. The petitioner thus qualifies as a member of the professions holding an

advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The director did not include any discussion under his headings relating to the intrinsic merit of the petitioner's area of work and whether the proposed benefits would be national in scope. Subsequently, however, the director appears to acknowledge that the petitioner proposes to benefit the U.S. economy.[1] The director ultimately denied the petitioner's request for a waiver based on a determination that the petitioner could not benefit the national interest to a greater extent than an available U.S. worker with the minimum qualifications for his field since the petitioner did not possess the minimum qualifications necessary in the field, a Ph.D.

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[1] This discussion appears in a section of the director's decision dedicated to a nonprecedent decision issued by this office prior to the precedent decision, *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 215.

As stated above, the petitioner qualifies for the classification sought as an advanced degree professional. While an alien must already have an advanced degree at the time of filing to qualify for the advanced degree professional classification, the alien's pursuit of another degree beyond his advanced degree does not preclude eligibility. In *Matter of New York State Dep't. of Transp.* 22 I&N Dec. at 219, n. 6, the AAO stated:

> It should be noted that the alien's past record need not be limited to prior work experience. The alien, however, clearly must have established, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his or her colleagues. The Service here does not seek a qualified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole.

*Id.* This paragraph indicates that student work can be considered as part of the petitioner's past record and that no threshold of education is necessary. We note, however, that the decision goes on to state that academic performance, such as grade point average, is not sufficient alone. Thus, while a Ph.D. candidate may bear a heavy burden to establish his ability to benefit the national interest to a greater extent than those with little work experience, the lack of the final Ph.D. diploma at the time of filing is not, by itself, grounds for denying the waiver request, especially when the petitioner is able to demonstrate work or practical experience prior to or during his Ph.D. studies.

Therefore, this matter will be remanded for consideration of whether the petitioner's past record, not limited to work experience, justifies projections of future benefit to the national interest. We note that the evidence consists mostly of testimony from collaborators and close colleagues regarding the petitioner's multidisciplinary qualifications to work on important projects and manuscripts published after the date of filing. In evaluating this evidence, the director should consider that eligibility for the waiver rests with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.